



## MURA & STORM

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Of Counsel

December 11, 2017

VIA ECF

Hon. Michael J. Roemer  
United States Magistrate Judge  
Robert H. Jackson United States Courthouse  
2 Niagara Square  
Buffalo, New York 14202

**Re: *Douglas J. Horn and Cindy Harp-Horn v. Medical Marijuana, Inc., Dixie Elixirs and Edibles, Red Dice Holdings, LLC and Dixie Botanicals***

***Civil Action No: 15-cv-701 FPG/MJR***

**Our File No. : 7023**

Dear Judge Roemer:

I am counsel for defendants Medical Marijuana, Inc. and Red Dice Holdings, LLC in this action. I write to you, however, on behalf of all defendants, after having consulted with defendant Dixie Elixirs and Edibles' attorneys about the letter request submitted to you late Thursday afternoon in this action by plaintiffs' counsel.

Collectively, defendants respectfully object to the December 7, 2017 letter request of plaintiffs' counsel Jeffrey Benjamin, Esq. (Document 45), seeking an extension of the parties' deadline for completing expert depositions as set forth in the October 7, 2016 Case Management Order (Document 31). As was the case with respect to the motion belatedly made on behalf of the plaintiffs earlier this year seeking an extension of all the remaining deadlines in this action, there is no justifiable reason to grant plaintiffs' latest belated request for an extension.

The parties have been aware for well over a year that expert depositions must be completed by December 29, 2017 per the Case Management Order. Defendants have planned accordingly and have timely completed the depositions of plaintiffs' disclosed experts.

## MURA&STORM, PLLC

Hon. Michael J. Roemer  
December 8, 2017  
Page 2

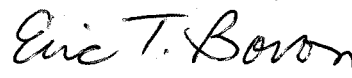
With all due respect, Mr. Benjamin's December 7, 2017 letter request fails to advise you of the following important facts. His correspondence to me of November 16, 2017 confirmed December 12, 2017 as the date he would conduct the depositions of the defense experts. His letter stated, "As you have offered, I can go forward with your experts on December 12, but please allow for December 13 as well as I do not know whether I will finish both in one day" (Ex. A). Defendants thereafter made the necessary scheduling arrangements to ensure that each of the two defense experts to be deposed, one traveling from Las Vegas, Nevada and the other from Albany, New York, would be in New York City on the agreed upon date of December 12. Defendants also made provision for the defense expert economist from Albany, New York to continue to be available the next day, in the event Mr. Benjamin was unable to complete both expert depositions on December 12.

On November 28, 2017, through emails exchanged, I received additional confirmation from Mr. Benjamin that the two depositions scheduled for December 12, 2017 of the defense experts were still "on" (Ex. B). Mr. Benjamin has advised neither defense counsel nor this Court of any actual fact or reason justifying his belated request to reschedule the defense economist's deposition, which would require three litigators and the busy out-of-town witness to adjust their schedules for no apparent reason.

Based upon all of the above, defendants respectfully ask you to deny plaintiffs' letter request. Please contact me should you need additional information. Thank you for your courtesy and consideration in this matter.

Very truly yours,

MURA&STORM, PLLC



Eric T. Boron

ETB/slf  
Enclosures

cc: Jeffrey Benjamin, Esq.  
J. C. Mazzola, Esq.  
Hanoch Sheps, Esq.

# ***EXHIBIT A***

**KUPILLAS, UNGER & BENJAMIN, LLP**

1 Linden Place, Suite 410-A  
Great Neck, NY 11021  
(516) 213-4493  
(718) 425-0692 (Fax)

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November 16, 2017

**Via First-Class Mail**

Eric Boron, Esq.  
Mura & Storm, PLLC  
930 Rand Building  
14 Lafayette Square  
Buffalo, NY 14203

Re: *Horn v. Medical Marijuana, Inc., et al.*  
Case No: 15-CV-701

Dear Messrs. Boron and Sheps:

In response to Mr. Boron's letters of November 9 and 15, 2017, plaintiff objects to the production of 5 years of their banking and credit card statements on numerous grounds. Among others, this request is untimely, and seeks material that is neither relevant nor reasonably calculated to lead to any admissible evidence. Consequently, there is no need, and we otherwise object to, further depositions of the plaintiffs.

As you know, I have in good-faith produced certain documents for the month in question you have requested and pursuant to my conversations with co-defendant's counsel. As you further know, the time for you to move to compel discovery has long gone pursuant to the Case Management Order.

As to the phone records, please be advised that the statements indicated with their daughter "Erica Nava" are indeed the phone records of the plaintiffs.

Last, we disagree that the disclosure of rebuttal expert Ellen Voie is late or incomplete. She has advised that she stands ready, willing and able to give a deposition in support of the Horns. As you state, you have currently not offered dates for her or Mr. Gobbell's depositions.

As you offered, I can go forward with your experts on December 12, but please allow for December 13 as well as I do not know whether I will finish both in one day.

Since we are going forward on December 1, 2017, I will need your rebuttal expert disclosures by November 27, 2017 in order to properly prepare. Please contact me with any questions.

Very truly yours,

*Jeffrey Benjamin*

Jeffrey Benjamin, Esq.

Cc: Hanoch Sheps, Esq.  
Messner Reeves LLP  
805 Third Ave, 18<sup>th</sup> Floor  
New York, NY 10022

# ***EXHIBIT B***

**Eric T. Boron**

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**From:** Jeffrey Benjamin <jbenjamin@nyfraudlaw.com>  
**Sent:** Tuesday, November 28, 2017 1:44 PM  
**To:** Eric T. Boron  
**Cc:** Hanoch Sheps  
**Subject:** RE: 7023 Horn

Yes confirmed.

-----Original Message-----

**From:** "Eric T. Boron" <eric.boron@muralaw.com>  
**Sent:** Tuesday, November 28, 2017 12:01pm  
**To:** "Jeffrey Benjamin" <jbenjamin@nyfraudlaw.com>  
**Cc:** "Hanoch Sheps" <hsheps@messner.com>  
**Subject:** RE: 7023 Horn

Jeffrey –

We have no plan at this point to serve ANY rebuttal expert disclosure.

Everything is “on” for the expert depositions scheduled for this Friday (NYC), next Monday (Buffalo), and December 12<sup>th</sup> (NYC), right?

Regards,

Eric T. Boron, Esq.  
MURA & STORM, PLLC  
930 Rand Building  
14 Lafayette Square  
Buffalo, New York 14203  
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(716) 855-2816 -- Fax (not for service)

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**From:** Jeffrey Benjamin [mailto:jbenjamin@nyfraudlaw.com]  
**Sent:** Tuesday, November 28, 2017 11:56 AM  
**To:** Eric T. Boron  
**Cc:** Hanoch Sheps  
**Subject:** RE: 7023 Horn

If you feel you will not get me your rebuttal by 11/30 in the morning, Dr. Graham has given multiple dates throughout December to reschedule.

-----Original Message-----

From: "Jeffrey Benjamin" <jbenjamin@nyfraudlaw.com>  
Sent: Monday, November 27, 2017 5:20pm  
To: "Eric T. Boron" <eric.boron@muralaw.com>  
Cc: "Hanoch Sheps" <hsheps@messner.com>  
Subject: RE: 7023 Horn

Given all that, I don't think we have an issue as to our Economist in Buffalo in 12/4, and will my make my travel arrangements. That is of course unless you do in fact have an economist rebuttal, and you serve it by mail only on 12/1 and I don't get it until after 12/4. Otherwise, I will accept that by e-mail as late as 12/1 so that our Economist can review it in advance.

However, we will have to reschedule Dr. Graham if you are planning on serving me on 12/1 with your rebuttal as to liability. We (plaintiffs, but specifically Dr. Graham) have the right to review that in advance of his deposition. We can avoid rescheduling if you serve me by e-mail as late as Thursday morning 11/30 with that rebuttal.

-----Original Message-----

From: "Eric T. Boron" <eric.boron@muralaw.com>  
Sent: Monday, November 27, 2017 4:09pm  
To: "Jeffrey Benjamin" <jbenjamin@nyfraudlaw.com>  
Cc: "Hanoch Sheps" <hsheps@messner.com>  
Subject: 7023 Horn

Jeffrey --

Defendants have until this coming Friday, December 1, 2017 to identify any rebuttal expert witnesses and produce their reports (see attached case management order).

By unanimous agreement of all attorneys in this case, plaintiffs' disclosed expert Dr. Graham will be deposed this Friday, December 1, 2017, beginning at 10:00 a.m. at Messner Reeves' office in Manhattan.

By unanimous agreement of all attorneys in this case, plaintiffs' disclosed expert Dr. Zaporowski will be deposed a week from today, next Monday, December 4, 2017, beginning at 10:00 a.m. at my office here in downtown Buffalo.

By unanimous agreement of all attorneys in this case, defendants' disclosed experts Dr. Orser and Charles Amodio will be deposed Tuesday, December 12, 2017, beginning at 10:00 a.m. at Messner Reeves' office in Manhattan.

There are no other expert depositions scheduled.

Please be advised that Defendants have no plans at present to disclose any rebuttal expert witness on any economic issue, although defendants respectfully reserve the right to do so later this week, within the case management order's December 1, 2017 deadline date. The same goes for any other potential defense rebuttal expert witness.

Importantly, please confirm by email reply to all that you and plaintiffs' disclosed expert witness Dr. Graham are going to appear at Messner Reeves for Dr. Graham's scheduled deposition this coming Friday, December 1, 2017. Your prompt confirmation is appreciated, as I can then solidify my travel plans into and out of Manhattan for this Friday's deposition.

Regards,

Eric T. Boron, Esq.  
MURA & STORM, PLLC  
930 Rand Building



14 Lafayette Square  
Buffalo, New York 14203  
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**From:** Jeffrey Benjamin [<mailto:jbenjamin@nyfraudlaw.com>]  
**Sent:** Monday, November 27, 2017 2:21 PM  
**To:** Eric T. Boron  
**Cc:** Hanoch Sheps  
**Subject:** Horn Rebuttals

Counsel, When can I expect your rebuttal witness disclosures and/or reports? Plaintiffs' witnesses need those to go forward with depositions.

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Jeffrey Benjamin, Esq.  
KUPILLAS, UNGER & BENJAMIN, LLP  
315 Madison Avenue, Ste 901  
New York, NY 10017  
(212) 655-9536

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